

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Respondent,

v.

KENNETH P. VARNELL,

Appellant.

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**DOCKET NUMBER WD70957**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** July 6, 2010

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**APPEAL FROM**

The Circuit Court of Cole County, Missouri  
The Honorable Richard G. Callahan, Judge

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**APPELLATE JUDGES**

Division Two: Mark D. Pfeiffer, Presiding Judge, and Victor C. Howard  
and Alok Ahuja, Judges

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**ATTORNEYS**

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Attorney for Appellant.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, )  
)  
Respondent, )  
v. )  
)  
KENNETH P. VARNELL, )  
)  
Appellant. )

WD70957

Cole County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and  
Victor C. Howard and Alok Ahuja, Judges

Kenneth Varnell appeals the ruling of the Circuit Court of Cole County denying his Motion for Judgment of Acquittal. On appeal, Varnell argues that because no one witnessed him driving and the time of his blood alcohol test wasn't logged, that there was insufficient evidence to support his conviction for drunk driving.

**AFFIRMED.**

### **Division Two holds:**

Varnell flipped his truck in a single-vehicle accident outside of Jefferson City, Missouri. When Deputy Flessa of the Cole County Sheriff's Department arrived at the scene of the accident, Varnell was being extricated from the vehicle by medical first-responders. Varnell smelled of alcohol, had slurred speech, and admitted to drinking two beers. Deputy Flessa placed Varnell under arrest and obtained permission to get a blood sample but, because of the extensive nature of Varnell's injuries, did not subject him to field tests for alcohol levels. When Varnell's blood alcohol level was tested at the hospital later that day, it was calculated to be .234%.

In his sole point on appeal, Varnell argues that because the State failed to establish the exact times at which his accident occurred and his blood was drawn, the evidence was insufficient to support a finding that, beyond a reasonable doubt, the appellant was intoxicated

while driving. We acknowledge that proof of intoxication at the time of arrest, when that arrest is remote from the defendant's operation of a vehicle, is not in and of itself a sufficient basis for a conviction. However, in situations where there are additional factors consistent with a finding of driving under the influence, circumstantial evidence can show that a blood alcohol test, even one administered remotely from the time of the operation of the vehicle, demonstrates beyond a reasonable doubt that the defendant was driving under the influence.

**Opinion by: Mark D. Pfeiffer, Judge**

July 6, 2010

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.